



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 14, 2020

By Email and ECF

Honorable Paul A. Engelmayer
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Re: *United States v. Carl Andrews*, S8 19 Cr. 131 (PAE)

Dear Judge Engelmayer:

We respectfully submit this letter in opposition to the defendant's application for a stay of the trial or, in the alternative, individual voir dire of the jurors regarding their view of COVID-19.

The defendant seeks a stay of an unspecified length because continuing the trial "poses grave, irreversible risks to all participants." (Def. Ltr. 1 (Dkt. No. 351).) But the defendant has not identified any specific risks to any particular participants other than a generalized fear that such risks could arise. Such generalized risks—while no doubt serious—have already been taken into account by the Chief Judge of this Court, who issued an Order yesterday taking several steps to reduce the size of public gatherings and reduce unnecessary travel. *In re: Coronavirus/COVID-19 Pandemic*, 20 Misc. 154 (S.D.N.Y. Mar. 13, 2020). Paragraph 5 of that Order made clear that it was not "meant to affect jury trials that began prior to March 16, 2020, and have not yet concluded," such as this one. *Id.* ¶ 5. The Government concurs with the Chief Judge's view: this ongoing jury trial should be permitted to conclude without a temporary stay.¹

Any request for a stay of unspecified length must also be weighed against the public's interest in a speedy trial and the victim's rights. 18 U.S.C. 3161(h)(7)(A) (public interest in speedy trial); 18 U.S.C. 3771(a)(7) (crime victim has "right to proceedings free from reasonable delay"). Trial has so far involved a full day of jury selection, nearly two-days of victim-testimony, and testimony from six witnesses in total. The parties' most recent estimate is that the presentation of

¹ The U.S. Attorney's Office for the Southern District of New York learned last Thursday that a special security officer ("SSO") assigned to the Office tested positive for COVID-19, and earlier today a Special Agent of the Office was informed that he tested positive for COVID-19. Those assigned to the trial team for the Government have not had any known contact with the SSO or Special Agent, and common areas at the Office have undergone sustained deep cleaning and sterilization in recent days. For the avoidance of doubt, no one on the trial team for the Government is exhibiting any symptoms associated with COVID-19.

evidence will conclude after approximately a half-day of testimony the next day the trial convenes. Imposing an unspecified delay of trial will deprive the public of a speedy resolution of this matter, especially given how close the parties believe they are to resting, and create substantial uncertainty for the victim about when, if ever, her rights will be vindicated. There is also serious concern that the full jury may well be unavailable to return after a lengthy delay.

A stay is also unnecessary in light of mitigating steps that are presently being taken by courthouse personnel, as well as additional measures that can be taken. The Government understands the courthouse has undergone substantial disinfectant measures before each courtroom proceeding. *See, e.g.*, Trial Tr. 291. And as a result of the Chief Judge's Order, there will be substantially fewer people present in the Courthouse this week.

Finally, the Government opposes any additional voir dire relating to jurors' specific views of COVID-19. The jurors have already been asked to commit to being impartial and taken an oath expressing that commitment. In addition, the Court has made abundantly clear to the parties and jurors its attention to the risks of COVID-19 and no juror has expressed any concern. There is no reason to take measures beyond those that have already been taken.

For all of these reasons, the Government opposes the defendant's request for a stay or, in the alternative, additional voir dire.

Respectfully Submitted,

GEOFFREY S. BERMAN
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by: /s/

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cc: Counsel to Carl Andrews (by ECF)